Gary M. Berne, OSB No. 774077
Email: gberne@stollberne.com
Steve D. Larson, OSB No. 863540
Email: slarson@stollberne.com
Mark A. Friel, OSB No. 002592
Email: mfriel@stollberne.com
STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. Oak Street, Fifth Floor
Portland, Oregon 97204
Telephone: (503) 227-1600
Facsimile: (503) 227-6840

Liaison Counsel for Lead Plaintiff Plumbers and Pipefitters Local Union No. 630 Pension-Annuity Trust Fund

Henry Rosen (admitted *Pro Hac Vice*)
Email: henryr@rgrdlaw.com
Trig R. Smith (admitted *Pro Hac Vice*)
Email: tsmith@rgrdlaw.com
ROBBINS GELLER RUDMAN & DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: (619) 231-1058
Facsimile: (619) 231-7423

Lead Counsel for Lead Plaintiff Plumbers and Pipefitters Local Union No. 630 Pension-Annuity Trust Fund

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

Case No. : 3:11-cv-00585-AC

IN RE: VESTAS WIND SYSTEMS A/S SECURITIES LITIGATION

CLASS ACTION ALLEGATION

This Document Relates To:

ALL ACTIONS

PLAINTIFFS' RESPONSE TO VESTAS' SUPPLEMENTAL AUTHORITY

Lead Plaintiff Plumbers and Pipefitters Local Union No. 630 Pension-Annuity Trust Fund and plaintiff Seth Thomas Reed (collectively, "Plaintiffs"), hereby respond to Vestas Wind Systems A/S ("Vestas") and Vestas-American Wind Technology, Inc.'s submission, on August 26, 2013, of *Salameh v. Tarsadia Hotel*, ___ F.3d ___, 2013 WL 4055825 (9th Cir. Aug. 13, 2013), as supplemental authority to the motion to dismiss briefing (Dkt. No. 107).

The issue in *Salameh* was whether a real-estate transaction constituted an investment contract for purposes of sufficiently pleading that a "security" was sold. *Salameh*, 2013 WL 4055825, at *3-*4.[1] Plaintiffs alleged federal and state securities law violations arising from their purchases of condominiums in the Hard Rock Hotel San Diego and the rental-management agreements signed in connection with those purchases. *Id*. at *1. The crux of plaintiffs' claims was that the sale of the hotel condominiums and the later rental-management agreements together constituted the sale of a security. *Id*. at *3. To determine whether the real-estate transaction was a security the court looked at the "economic reality of the transaction," as required by *United Hous. Found., Inc. v. Forman*, 421 U.S. 837, 848 (1975). *See Salameh*, 2013 WL 4055825, at *3. Under that analysis, the court concluded that plaintiffs' economic reality argument failed since it assumed that the condominiums' only viable use was as an investment property when in fact they could be used as short-term vacation homes. *Id*. at *5. Within that specific context, the court concluded the transaction did not constitute the sale of a security. *Id*.

Seizing on the "economic reality" language of *Salameh*, Defendants invite the Court to apply the test to the facts and legal issues in this case. *See* Dkt. No. 107 at 3. To do so, however, would require this Court to deviate from the bright line test set forth by the Supreme Court in *Morrison*, which focuses specifically and exclusively on where the security purchase occurred.

---

[1] Here, there is no dispute that a "security" was sold. *See* Vestas' Reply at 6 n.5 (Dkt. No. 103) (confirming an ADR is a "security").

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

See Plaintiffs' Consolidated Opposition at 14 (quoting *Wu v. Stomber*, 883 F. Supp. 2d 233, 253 (D.D.C. 2012)) (Dkt. No. 100). As alleged, Plaintiffs' purchases of Vestas securities are "domestic transactions" under the second *Morrison* prong since they were purchased and sold in the United States. *See* Plaintiffs' Consolidated Opposition at 11-16 (Dkt. No. 100).[2] At the pleading stage, no further inquiry is required. *See Pope Invs. II, LLC v. Deheng Law Firm*, No. 10 Civ. 6608 (LLS), 2013 U.S. Dist. LEXIS 108114, at *16 (S.D.N.Y. July 31, 2013) (Dkt. No. 106).

Dated this 29th day of April, 2013.

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

By: /s/Steve D. Larson

Gary M. Berne, OSB No. 774077
Email: gberne@stollberne.com
Steve D. Larson, OSB No. 863540
Email: slarson@stollberne.com
Mark A. Friel, OSB No. 002592
Email: mfriel@stollberne.com
209 SW Oak Street, Suite 500
Portland, OR 97204
Telephone: (503) 227-1600
Facsimile: (503) 227-6840

Liaison Counsel for Lead Plaintiff Plumbers and Pipefitters Local Union No. 630 Pension-Annuity Trust Fund

and

[2] The securities at issue here also satisfy the first *Morrison* prong, *i.e.*, they were listed on a domestic exchange, since they were traded on the domestic over-the-counter market. *See* Plaintiffs' Consolidated Opposition at 10-11 & nn.4 & 6 (citing *SEC v. Ficeto*, 839 F. Supp. 2d 1101, 1106-15, 1117 (C.D. Cal. 2011)) (Dkt. No. 100); *but see* Vestas' Reply at 3 (Dkt. No. 103) (wrongly asserting that Plaintiffs rely exclusively on *Morrison*'s second prong).

Henry Rosen (admitted *Pro Hac Vice*)
Email: henryr@rgrdlaw.com
Trig R. Smith (admitted *Pro Hac Vice*)\
Email: tsmith@rgrdlaw.com
ROBBINS GELLER RUDMAN & DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: (619) 231-1058
Facsimile: (619) 231-7423

Lead Counsel for Lead Plaintiff Plumbers and Pipefitters Local Union No. 630 Pension-Annuity Trust Fund

Jeffrey A. Berens (admitted *Pro Hac Vice*)
Email: jeff@dyerberens.com
DYER & BERENS LLP
303 East 17th Avenue, Suite 810
Denver, CO 80203
Telephone: (303) 861-1764
Facsimile: (303) 395-0393

Additional Counsel for Plaintiffs